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From:

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To:

Cc:

Subject: RE: 6707A question

asked that I address the question you posed below.

Example 4 of Treas. Reg. 301.6707A-1T(c)(2) addresses the situation described below where the taxpayer participates in a non-listed transaction. In the example, the taxpayer did not file a disclosure with his timely return, but filed a disclosure with an amended return. As stated in the example, our position is that the amended return with the attached disclosure statement does not cure an earlier failure satisfying the disclosure requirements of section 6011. The example goes on, however, to state that the filing of the disclosure statement with an amended return is a factor that will weigh heavily in favor of rescission of the penalty, should the taxpayer make a request for rescission under Rev. Proc. 2007-21. Note, however, if the transaction is a listed transaction rescission is not available. Treas. Reg. 301.6707A-1T(d)(1).

Section 301.6707A-1T(d) addresses the Secretary's rescission authority and sets out factors that will be considered. One of the factors, section 301.6707A-1T(d)(3)(i) is whether the taxpayer upon learning of the disclosure obligation filed Form 8886. This untimely disclosure will weigh heavily in favor of rescission provided that (1) the taxpayer disclosed the transaction before the date the IRS first contacts the taxpayer concerning an examination of the tax period to which the transaction relates, and (2) the taxpayer did not unnecessarily delay in reporting the transaction until the IRS had taken steps to identify the taxpayer's participation in the reportable transaction in question.

Please let me know if you have any further questions.